

UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION

IN RE:	)	
	)	CHAPTER 13
MILTON VILA, JR.	)	
& JAMIE RENEE VILA aka	)	
JAMIE R SHERROD	)	
	)	CASE NO. 10-81603
DEBTORS.	)	

UNITED STATES OF AMERICA'S MOTION TO DISMISS  
CHAPTER 13 CASE FOR FAILURE TO FILE PREPETITION TAX RETURNS

Comes now the United States of America, by and through its attorney, John W. Stone, Jr., the Acting United States Attorney for the Middle District of North Carolina, on behalf of the Internal Revenue Service (the Service), and respectfully moves that this case be dismissed.

IN SUPPORT THEREOF, the United States avers:

1. The debtors in this case filed their Chapter 13 petition on September 1, 2010.

2. On October 21, 2010, the Service filed its Proof of Claim dated October 20, 2010, in the amount of \$25,773.78 (Service's claim). Such claim consists of a secured claim in the amount of \$4,925.35, an unsecured priority claim pursuant to 11 U.S.C. § 507(a)(8) in the amount of \$19,357.82, and an unsecured

general claim in the amount of \$1,490.61. A copy of the Service's claim is attached hereto as Exhibit A.

3. The debtors' income tax liabilities set forth on the Service's claim with respect to taxable years 2008 and 2009 have been estimated because they failed to file federal income tax returns for such years.

4. According to 11 U.S.C. § 1308, not later than the day before the date on which the meeting of creditors is first scheduled to be held under 11 U.S.C. § 341(a), the debtor must file all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition.

5. Since the Chapter 13 petition in this case was filed on September 1, 2010, the debtors were required to file all tax returns for all taxable periods ending between September 1, 2006, and September 1, 2010, by October 14, 2010, the day before the meeting of creditors under 11 U.S.C. § 341(a) was first scheduled to be held on October 15, 2010, in order to comply with 11 U.S.C. § 1308.

6. On October 15, 2010, the meeting of creditors under 11 U.S.C. § 341(a) was held.

7. The Service's records reflect that the debtors still have not filed a federal income tax return with respect to their taxable year 2008 or 2009. Attached as Exhibit B is a true and

correct copy of Form 2866, Certificate of Official Record, with attached IMF MCC Transcripts - IMF Literal transcripts for the taxable years ended December 31, 2008, and December 31, 2009. These transcripts are records of the debtors' tax filing and payment activity for the taxable years 2008 and 2009. The transcripts show that the debtors have not filed federal income tax returns with respect to 2008 or 2009.

8. Section 1307(e) of the Bankruptcy Code provides that dismissal or conversion of a Chapter 13 case is mandatory if a debtor fails to file a tax return required by 11 U.S.C. § 1308. To that end, section 1307(e) provides:

Upon the failure of the debtor to file a tax return under section 1308, on request of a party in interest or the United States trustee and after notice and a hearing, the court **shall** dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interest of the creditors and the estate. [Emphasis added.]

9. Dismissal or conversion under 11 U.S.C. § 1307(e) is mandatory if a party in interest requests it, even if a debtor belatedly files the missing return. In re Cushing, 401 B.R. 528 (1<sup>st</sup> Cir. BAP 2009) (Debtor filed his prepetition Federal income tax return prior to an extended due date granted by the Service, but after the deadline under 11 U.S.C. § 1308(a). Dismissal or conversion was mandatory under 11 U.S.C. § 1307(e)); In re Kuhar, 391 B.R. 733 (Bankr. E.D. Pa. 2008) (Debtor filed required returns

prior to hearing on a motion to dismiss under 11 U.S.C. § 1307(e), but after the deadline under 11 U.S.C. § 1308. Dismissal or conversion was mandatory under 11 U.S.C. § 1307(e)); In re Perry, 389 B.R. 62 (Bankr. N.D. Ohio 2008) (Even though debtor provided copy of his 2004 tax return prior to the hearing, but after the 11 U.S.C. § 1308 deadline, dismissal was mandatory).

10. As indicated above, pursuant to 11 U.S.C. § 1308, the debtors were required to file their federal income tax returns for the taxable years 2008 and 2009 no later than October 14, 2010. As discussed above, section 1307(e) of the Bankruptcy Code provides that dismissal or conversion of a Chapter 13 case is mandatory if a debtor fails to file a tax return required by 11 U.S.C. § 1308. Consequently, the instant case should be converted or dismissed.

WHEREFORE, it is respectfully requested that the debtors' Chapter 13 case be dismissed.

JOHN W. STONE, JR.  
Acting United States Attorney

12/21/10

Date

By:

Scott L. Little

Scott L. Little  
Special Assistant  
United States Attorney  
F.L. Bar No. 0963011  
320 Federal Place, Room 509  
Greensboro, NC 27401  
Tel. No. (336) 378-2055

UNITED STATES BANKRUPTCY COURT <u>MIDDLE</u> DISTRICT OF <u>NORTH CAROLINA</u>		<b>PROOF OF CLAIM</b>
Name of Debtor: <u>MILTON &amp; JAMIE RENEE VILA JR.</u>		Case Number: <u>10-81603</u>
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request of payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property): <u>Department of the Treasury - Internal Revenue Service</u>		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.  Court Claim Number: _____ (If known)  Filed on: _____
Name and address where notices should be sent: <u>Internal Revenue Service</u> <u>P.O. Box 21126</u> <u>Philadelphia, PA 19114</u>  Telephone number: <u>1-800-913-9358</u> Creditor Number: <u>784616829</u>		
Name and address where payments should be sent (if different from above): <u>Internal Revenue Service</u> <u>P.O. Box 21125</u> <u>Philadelphia, PA 19114</u>  Telephone Number: <u>1-800-913-9358</u>		<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.  <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.
1. Amount of Claim as of Date Case Filed: <u>\$ 25,773.78</u>  If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.  If all or part of your claim is entitled to priority, complete item 5.  <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.  Specify the priority of the claim.  <input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).  <input type="checkbox"/> Wages, salaries, or commissions (up to \$11,725*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. §507 (a)(4).  <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507 (a)(5).  <input type="checkbox"/> Up to \$2,600* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507 (a)(7).  <input checked="" type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8).  <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507 (a)(____).  Amount entitled to priority:  <u>\$ 19,357.82</u>  <i>*Amounts are subject to adjustment on 4/1/13 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</i>
2. Basis for Claim: <u>Taxes</u> (See instruction #2 on reverse side.)		
3. Last four digits of any number by which creditor identifies debtor: <u>See Attachment</u>  3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)		
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.  Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other Describe: <u>*All of debtor(s) right, title and interest to property - 26 U.S.C. §6321</u>  Value of Property: \$ _____ Annual Interest Rate <u>4</u> %  Amount of arrearage and other charges as of time case filed included in secured claim.  if any: \$ <u>4,925.35</u> Basis for perfection: <u>See Attachment</u>  Amount of Secured Claim: \$ <u>4,925.35</u> Amount Unsecured: \$ <u>1,490.61</u>		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.  7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.)  DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.  If the documents are not available, please explain:		
Date: <u>10/20/2010</u>  Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.  <u>/s/ TANAYA SCHIFF,</u> <u>Bankruptcy Specialist</u> <u>(336) 378-2364</u>  <u>Internal Revenue Service</u> <u>320 FEDERAL PL, RM 335</u> <u>GREENSBORO, NC 27401</u>		<b>FOR COURT USE ONLY</b>

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C §§ 152 and 3571.

# Proof of Claim for Internal Revenue Taxes

Department of the Treasury/Internal Revenue Service



Form 10  
Attachment

**In the Matter of:** MILTON & JAMIE RENEE VILA JR.  
AKA JAMIE R SHERROD  
106 FETLOCK COURT  
RAEFORD, NC 28376

Case Number

10-81603

Type of Bankruptcy Case

CHAPTER 13

Date of Petition

09/01/2010

The United States has not identified a right of setoff or counterclaim. However, this determination is based on available data and is not intended to waive any right to setoff against this claim debts owed to this debtor by this or any other federal agency. All rights of setoff are preserved and will be asserted to the extent lawful.

## Secured Claims (Notices of Federal tax lien filed under internal revenue laws before petition date)

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Penalty to Petition Date	Interest to Petition Date	Notice of Tax Lien Filed: Date	Office Location
XXX-XX-6489	INCOME	12/31/2005	12/04/2006	\$255.77	\$1,594.42	\$762.76	05/21/2008	HOKE COUNTY
XXX-XX-6489	INCOME	12/31/2006	08/06/2007	\$1,631.77	\$346.77	\$333.86	05/21/2008	HOKE COUNTY
				\$1,887.54	\$1,941.19	\$1,096.62		

**Total Amount of Secured Claims: \$4,925.35**

## Unsecured Priority Claims under section 507(a)(8) of the Bankruptcy Code

Taxpayer ID Number	Kind of Tax	Tax Period	Date Tax Assessed	Tax Due	Interest to Petition Date
XXX-XX-6489	INCOME	12/31/2004	04/21/2008	\$1,423.00	\$555.26
XXX-XX-6489	INCOME	12/31/2007	12/08/2008	\$1,072.00	\$173.06
XXX-XX-6489	INCOME	12/31/2008	/ Unassessed-No Return	\$6,049.29	\$343.50
XXX-XX-0792	INCOME	12/31/2008	/ Unassessed-No Return	\$1,731.20	\$98.31
XXX-XX-6489	INCOME	12/31/2009	/ Unassessed-No Return	\$5,749.20	\$88.24
XXX-XX-0792	INCOME	12/31/2009	/ Unassessed-No Return	\$2,043.40	\$31.36
				\$18,068.09	\$1,289.73

**Total Amount of Unsecured Priority Claims: \$19,357.82**

## Unsecured General Claims

Penalty to date of petition on unsecured priority claims (including interest thereon) . . . . . \$1,490.61

**Total Amount of Unsecured General Claims: \$1,490.61**

1 UNASSESSED TAX LIABILITY(IES) HAVE BEEN LISTED ON THIS CLAIM BECAUSE OUR RECORDS SHOW NO RETURN(S) FILED. WHEN THE DEBTOR(S) FILES THE RETURN OR PROVIDES OTHER INFORMATION AS REQUIRED BY LAW THE CLAIM WILL BE AMENDED

INTERNAL REVENUE SERVICE FACSIMILE FEDERAL TAX LIEN DOCUMENT  BANKRUPTCY DOCKET: 10-81603	Lien Recorded : 05/21/2008 - 14:01PM Recording Number: 08M00076 UCC Number : Liber : Page :
Area: SMALL BUSINESS/SELF EMPLOYED #3 Lien Unit Phone: (800) 829-3903	IRS Serial Number: 443482108

This Lien Has Been Filed in Accordance with  
Internal Revenue Regulation 301.6323(f)-1.

## Name of Taxpayer:

MILTON & JAMIE R VILA JR  
AKA MILTON JR & JAMIE R VILA

## Residence:

106 FETLOCK CT  
RAEFORD, NC 28376-5005

With respect to each assessment below, unless notice of lien  
is refiled by the date in column(e), this notice shall constitute  
the certificate of release of lien as defined in IRC 6325(a).

Form (a)	Period (b)	ID Number (c)	Assessed (d)	Refile Deadline (e)	Unpaid Balance (f)
1040	12/31/2003	XXX-XX-6489	10/03/2005	11/02/2015	\$62.46
1040	12/31/2005	XXX-XX-6489	12/04/2006	01/03/2017	\$3,811.09
1040	12/31/2006	XXX-XX-6489	08/06/2007	09/05/2017	\$1,676.36

Filed at: CLERK OF SUPERIOR COURT HOKE COUNTY RAEFORD, NC 28376	Total	\$5,549.91
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This notice was prepared and executed at BALTIMORE, MD  
on this, the 07th day of May, 2008.

Authorizing Official: DEBRA K. HURST (800) 829-7650	Title: ACS 12-00-0000
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United States



of America

Department of the Treasury  
Internal Revenue Service

Date: *December 17, 2010*

**CERTIFICATE OF OFFICIAL RECORD**

I certify that the annexed: is a redacted Account Transcript captioned Milton & Jamie R Vila Jr, XXX-XX-6489 & XXX-XX-0792, 106 Fetlock Ct, Raeford, NC 28376-5005-068, for the taxable years ended December 31, 2008, and December 31, 2009, consisting of 3 pages \_\_\_\_\_

\_\_\_\_\_ under the custody of this office.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of this office to be affixed, on the day and year first above written.

By the direction of the Secretary of the Treasury:

*Janice Wright*  
Paula M. Curren  
Disclosure Manager 07

**EXHIBIT** *B*





# Internal Revenue Service

United States Department of the Treasury

This Product Contains Sensitive Taxpayer Data

## Account Transcript

Request Date: 12-16-2010

Response Date: 12-16-2010

Tracking Number: 100087106226

FORM NUMBER: 1040

TAX PERIOD: Dec. 31, 2008

TAXPAYER IDENTIFICATION NUMBER: [REDACTED] 6489

SPOUSE TAXPAYER IDENTIFICATION NUMBER: [REDACTED] 0792

MILTON & JAMIE R VILA JR

106 FETLOCK CT

RAEFORD, NC 28376-5005-068

--- ANY MINUS SIGN SHOWN BELOW SIGNIFIES A CREDIT AMOUNT ---

ACCOUNT BALANCE:	0.00	
ACCRUED INTEREST:	0.00	AS OF: Nov. 15, 2010
ACCRUED PENALTY:	0.00	AS OF: Nov. 15, 2010

ACCOUNT BALANCE PLUS ACCRUALS  
(this is not a payoff amount): 0.00

\*\* INFORMATION FROM THE RETURN OR AS ADJUSTED \*\*

EXEMPTIONS:	00	FILING STATUS:	Married Filing Joint
ADJUSTED			
GROSS INCOME:			
TAXABLE INCOME:			
TAX PER RETURN:			
SE TAXABLE			
INCOME TAXPAYER:			
SE TAXABLE			
INCOME SPOUSE:			
TOTAL SELF			
EMPLOYMENT TAX:			

### TRANSACTIONS

CODE	EXPLANATION OF TRANSACTION	CYCLE DATE	AMOUNT
	No tax return filed		
140	Inquiry for non-filing of tax return	11-30-2009	\$0.00
971	Notice issued	12-21-2009	\$0.00

This Product Contains Sensitive Taxpayer Data



# Internal Revenue Service

United States Department of the Treasury

This Product Contains Sensitive Taxpayer Data

## Account Transcript

Request Date: 12-16-2010

Response Date: 12-16-2010

Tracking Number: 100087106226

FORM NUMBER: 1040

TAX PERIOD: Dec. 31, 2009

TAXPAYER IDENTIFICATION NUMBER: [REDACTED] 6489

SPOUSE TAXPAYER IDENTIFICATION NUMBER: [REDACTED] 0792

MILTON & JAMIE R VILA JR

106 FETLOCK CT

RAEFORD, NC 28376-5005-068

--- ANY MINUS SIGN SHOWN BELOW SIGNIFIES A CREDIT AMOUNT ---

ACCOUNT BALANCE:	0.00	
ACCRUED INTEREST:	0.00	AS OF: Nov. 15, 2010
ACCRUED PENALTY:	0.00	AS OF: Nov. 15, 2010

ACCOUNT BALANCE PLUS ACCRUALS  
(this is not a payoff amount): 0.00

\*\* INFORMATION FROM THE RETURN OR AS ADJUSTED \*\*

EXEMPTIONS:	00	FILING STATUS:	Married Filing Joint
ADJUSTED			
GROSS INCOME:			
TAXABLE INCOME:			
TAX PER RETURN:			
SE TAXABLE			
INCOME TAXPAYER:			
SE TAXABLE			
INCOME SPOUSE:			
TOTAL SELF			
EMPLOYMENT TAX:			

### TRANSACTIONS

CODE	EXPLANATION OF TRANSACTION	CYCLE DATE	AMOUNT
	No tax return filed		
460	Extension of time to file ext. Date 10-15-2010	04-15-2010	\$0.00

This Product Contains Sensitive Taxpayer Data

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing UNITED STATES OF AMERICA'S MOTION TO DISMISS CHAPTER 13 CASE FOR FAILURE TO FILE PREPETITION TAX RETURNS was served this date on the parties listed below by depositing copies thereof, postage prepaid, in the United States mail, or via electronic service of the ECF system:

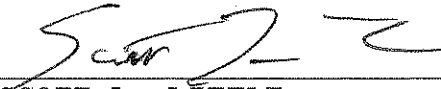
Milton Vila, Jr.  
Debtor  
106 Fetlock Court  
Raeford, NC 28376

Jamie Renee Vila aka Jamie R Sherrod  
Debtor  
106 Fetlock Court  
Raeford, NC 28376

John T. Orcutt  
Attorney for Debtor  
6616-203 Six Forks Rd.  
Raleigh, NC 27615

Richard M. Hutson, II  
Chapter 13 Office  
302 East Pettigrew St., Suite B-140  
P.O. Box 3613  
Durham, NC 27702

Date: 12/21/10

  
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Special Assistant  
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